



June 16, 2000

MEMORANDUM

SUBJECT: Applicability of Policy Against “No Action” Assurances to CERCLA

FROM: Barry Breen, Director /s/
Office of Site Remediation Enforcement (OSRE)

TO: Addressees

This memorandum affirms the applicability of the Agency’s general policies concerning “no action” assurances to sites subject to the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). It also explains alternatives to CERCLA “no action” assurances which our experience indicates will typically be sufficient.

On March 3, 1995, the Assistant Administrator signed “*Processing Requests for Use of Enforcement Discretion*”, recirculating the November 16, 1984 “*Policy Against “No Action” Assurances*”. The 1995 memo promised further guidance on its applicability to CERCLA and similar programs. OSRE convened a work group to explore this issue.

While CERCLA does raise some different issues than regulatory statutes, EPA has developed administrative reforms and other guidance to address these issues and to provide comfort to parties interested in acquiring contaminated sites. Some steps EPA has taken include:

- ! Issuance of the “*Policy on the Issuance of Comfort/Status Letters*” on November 8, 1996, which promotes the use of ‘model letters’ to provide parties with information about site-specific property conditions, as well as EPA’s intentions regarding Superfund response actions at the property;
- ! Removal from CERCLIS of over 31,000 sites where no further federal Superfund interest was warranted;
- ! Broader use of prospective purchaser agreements which provide liability releases for existing contamination to purchasers seeking to cleanup, redevelop, or reuse property subject to current, past, or future EPA action, in exchange for a contribution to the cleanup and other indirect benefits to the local community;

- ! Issuance of the “*Policy Toward Owners of Property Containing Contaminated Aquifers*” (May 24, 1995), which provides the conditions in which EPA will exercise its enforcement discretion to forego taking action against, and protect from litigation through settlement, parties with property contaminated by subsurface migration from an outside source; and
- ! Issuance of the “*Procedures for Partial Deletions at NPL Sites*”(April 30, 1996), which allows deletion from the NPL of portions of Superfund sites where EPA determines that no further response action is appropriate.

Finally, statutory provisions, such as innocent landowner provisions and the 1996 amendment to the lender liability provisions, continue to offer additional protections to these parties.

Based on the workgroup’s conclusions and tools such as the above, the 1995 general guidance on “no action” assurances applies to CERCLA. All “no action” assurances require concurrence of the Assistant Administrator for Enforcement and Compliance Assurance (OECA).

If you have any questions about the policy, please contact Seth Bruckner (202-564-5142) in EPA’s Office of Site Remediation Enforcement.

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